

REMARKS

Applicant requests reconsideration and reexamination of the above-identified application in view of the arguments and amendments made to the claims. The following remarks state Applicant's bases for making this request and are organized according to the Examiner's Action.

Claims Rejections - 35 U.S.C. § 103

The Examiner states that Claims 1 and 3 are rejected under 35 U.S.C. 103(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) or obvious over U.S. Patent No. 2,738,872 (De Boton '872). The Examiner states that De Boton '872 discloses a testing platform comprising a top plate (17) spaced above a middle plate (18) spaced above a bottom plate (11); each of the top plate (17) and the middle plate (18) comprises a matrix of holes (unnumbered - see 2nd and 3rd rows from the far left of Figure 1) that are aligned with another (see left side of Figure 2); a column of slots (unnumbered - see narrow opening on the far left side of Figure 1) in the top plate (17) positioned adjacent to the matrix of holes therein; and with respect to claim 3, the column of slots in the top plate (17) comprise through slots (i.e., the tubes 13 in Figure 2 are shown as extending therethrough). However, the Examiner further states that the claims differ from De Boton '872 in requiring the middle plate to have a column of

slots directly under the column of slots in the top plate (claim 1).

Applicant has amended Claim 1 to more particularly point out and distinctly claim the subject matter of the present invention. Claim 1 now calls for:

"... a column of slots in said top plate positioned adjacent to and spaced apart from said matrix of holes in said top plate; and

a column of slots in said middle plate positioned adjacent to and spaced apart from said matrix of holes in said middle plate and directly under said columns of slots in said top plate, said middle plate column of slots comprises non-through slots."

Applicant believes that Claim 1 as amended is not obvious from De Boton because De Boton teaches a plurality of slots immediately adjacent to a plurality of holes and not "spaced apart" from said holes. In fact, De Boton teaches that each slot is part of an adjacent hole in the form of a rectangular extension of the hole. Further, De Boton shows that the middle slot comprises a through slot because a slide 14 extends through the middle plate 18 to the bottom wall 11. In the present invention the middle plate is a non-through slot to accommodate the new technology of "gel-cards" and the non-through slot is not intended to receive the slide 14 as

described in De Boton because the slide 14 is a much longer device compared to the gel-cards.

The Examiner states that although De Boton '872 does not explicitly show or discuss such slots in the middle plate, it would have been obvious to one of ordinary skill in the art at the time the invention was made (i.e. the examiner takes official notice) that the middle plate (18) of De Boton '872 would comprise slots positioned under the slots of the top plate (17), since the slides (14) are shown in Figure 2 as extending from the top plate (17) to the bottom plate (11), thereby increasing support and stability of the slides placed therein when the platform is moved.

Applicant wishes to traverse the Examiner taking Official Notice as described in the preceding paragraph because the slots of the present invention are designed to accommodate or receive a "gel-card" which is relatively new technology and not slides as taught by De Boton '872. The middle plate of the present invention comprises a "non-through" slot which is required for the gel-cards. The middle space 18 in De Boton '872 comprises a through slot which was designed for slides 14 to pass through.

Therefore, Applicant believes that Claim 1 as amended is not obvious from De Boton, especially because gel-cards did not exist years ago, and De Boton cannot accommodate gel-cards.

Applicant believes that Claim 1 is now patentable and that dependent Claims 2, 3, 5 and 6 which are dependent on Claim 1 either directly or indirectly are now patentable. Claim 4 is cancelled.

The Examiner states that Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over De Boton '872 alone. The Examiner states that De Boton '872 discloses the platform as advanced above whereby the platform comprises a plurality of rows, (i.e., 1-10 on left side of Figure 1) and each row comprises a first type hole (third aperture from the left of Figure 1) with a first diameter, a second type hole (middle aperture on left of Figure 1) having a second diameter, and one slot. The Examiner points out that it is noted that the claim does not require the first and second diameters to be different! The claim differs from De Boton '872 in requiring a plurality of second type holes in each row. The Examiner then states that it would have been obvious to one of ordinary skill in the art at the time the invention was made (i.e., the examiner takes "Official Notice" to have provided each row with a plurality of second type holes, (for example, as shown in cited U.S. Patent Nos. 4,125,122; 4,284,603; and 4,407,958), for increased storage capabilities and capacity.

However, Applicant wishes to traverse the Examiner's taking Official Notice of providing each row with a plurality of same diameter holes as disclosed in De Boton '872 and Emmitt '022. Applicant has amended Claim 2 herein to call for

"...a plurality of a second type hole of said matrix of holes having a second diameter, said second diameter being different than said first diameter, and one slot of said columns of slots."

Therefore, Claim 2 now recites that the first and second diameters of the first type hole and the second type hole respectively are different which De Boton does not disclose or teach. Furthermore, Claim 2 is dependent on Claim 1, and Applicant believes that Claim 1 as amended is nonobvious and patentable, as argued above so Applicant believes that Claim 2 is patentable.

The Examiner states that Claims 1, 3, and 4 are rejected under 103(a) as being unpatentable over U.S. Patent No. 4,124,122 (Emmitt '122). The Examiner states that Emmitt '122 discloses a platform comprising a top plate (16) disposed above a middle plate (14) which is disposed above a bottom plate (12); each of the middle and top plates (14, 16) comprises a matrix of holes (28) aligned with one another (see Figure 2); a plurality of rows (see Figure 1) is provided in the platform with each row (e.g., the row at the top of Figure 1) comprising

a first type hole, a second type hole, and a portion of a slot; a through slot (34) is positioned in the top plate (16) that is alignment with a slot (32) in the middle plate (14).

The Examiner points out that the claims differ from Emmitt '122 in requiring : (a) a column of slots in each of the top and middle plates (claim 1); and (b) the slots in the middle tray to be non-through slots (claim 4). The Examiner then states that with respect to (a), although Emmitt '122 discloses only one slot in each of the top and middle plates, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have provided a plurality of slots in each plate, for increased storage capacity and capabilities (See MPEP 2144.04(VI)(B)).

Applicant wishes to point out that Emmitt teaches one slot in the top plate 16 and one slot in the middle plate 14, and the slot in the middle plate 14 is a through slot and not a non-through slot as in the present invention. The Examiner states that each row (at the top of Fig. 1 of Emmitt) comprises a first type hole, a second type hole and a "portion" of a slot. However, the present invention teaches a complete slot in each row and not a portion of a slot. The slots 42₁-42₈ of the present invention are designed to receive gel-cards and that is why the middle plate 14 of the present invention has non-through slots. Just adding a plurality of slots in each plate of Emmitt '122 as stated by the Examiner as being obvious

would not accommodate receiving gel-cards. The design of the present invention is not obvious from Emmitt, but instead was conceived to accommodate the new technology gel-card. Therefore, the present invention is not obvious from Emmitt '122.

The Examiner states that with respect to (b) it would have been obvious to one of ordinary skill in the art at the time the invention was made to have fabricated the middle plate of Emmitt '122 such that the slots therein would be non-through slots, thereby increasing structural support of articles placed therein.

However, again Applicant wishes to point out that the non-through slots 42₁-42₈ are provided to receive the relatively new technology gel-cards and not to provide increased structural support of articles placed therein. Emmitt '122 teaches that "the slots 32 and 34 have to have a width of an order of magnitude about equal to the diameter of apertures 28 and 26 such that the slots may be used to hold empty or additional test tubes" (Col. 3, lines 2-5). Therefore, Emmitt '122 teaches having wide slots for test tubes which teaches away from the present invention of narrow slots for gel-cards, which is clearly not obvious from Emmitt. Applicant has amended Claim 1 to include the limitation of "... said middle plate column of slots comprises a non-through slot", and Claim 4 is cancelled. Therefore, Applicant believes that Claim 1 as

amended is clearly not obvious from Emmitt '122 and that Claim 1 is patentable. Claim 3 is dependent on Claim 1 and likewise nonobvious and patentable.

The Examiner states that Claim 1-3, 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,778,232 (McMorrow, Jr. '232) in view of De Boton '872. The Examiner states that McMorrow, Jr. '232 discloses a platform comprising a top plate (27) disposed above a middle plate (25) which is disposed above a bottom plate (23); each of the middle and top plates (27, 25) comprises a matrix of holes (7 and 522 - half of the rows form the left to middle of Figure 1) aligned with one another (See Figure 2); *with respect to claim 2*, a plurality of rows (see Figure 1 - one row extends from left to right in Figure 1) is provided in the platform with each row (e.g., the row at the top of Figure 1) comprising a first type hole, a second type hole, and a third type hole; *with respect to claim 2*, the Examiner notes that the claim does not require the first and second diameters to be different; *with respect to claim 5*, the platform comprises spacers (29) for securing the top plate (27), the middle plate (25) and the bottom plate (23) together such that the spacers are inserted between the top plate (27) and the middle plate (25) and the middle plate and the bottom plate (23); and *with respect to claim 6*, the platform comprises standoffs (29 - between 21 and 23 in Figure 1)

The Examiner then states that Claims 1-3, 5 and 6 differ from McMorrow, Jr. '232 in requiring: (a) a column of slots in the top plate, positioned adjacent to the matrix of holes in the top plate and a column of slots in the middle plate aligned with the slots in the top plate (claim 1); (b) each row to have a first hole, a plurality of second holes and a slot (claim 2); (c) the slots in the top plate are through slots (claim 3); and (d) screws screwed into the spacers (claim 5) and standoffs (claim 6). The Examiner states that with respect to a), (b), and (c), De Boton '872 teaches the platform as advanced above.

Applicant has amended Claim 1 and 2 to more particularly point out and more distinctly claim the present invention. The Examiner points out in the previous paragraph how the claims differ from McMorrow, Jr. '232. However, Applicant has described above why Claim 1 is not anticipated or obvious from De Boton '872 and Claim 2 as amended is dependent on amended Claim 1.

The Examiner states that it would have been obvious to have provided the platform of McMorrow, Jr. '232 with one of the through slots in each row as taught by De Boton '872 for increased organizational capacity of the platform. However, the Examiner's argument is moot because of the amendments to Claims 1 and 2. De Boton '872 does not disclose a "spaced-apart" slot in each row for receiving gel-cards. Further, McMorrow, Jr. '232 does not disclose the use of screws. The

Examiner states that with respect to (d), although McMorrow, Jr. '232 does not disclose the use of screws, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized screws in the platform of McMorrow, Jr. '232 for increasing rigidity and stability of the platform. However, McMorrow, Jr. '232, which has no slots, when combined with De Boton '872 do not disclose, suggest or describe the platform of the present invention as recited in Claim 1. Claims 5 and 6 recite the use of screws which are not disclosed or suggested by either McMorrow, Jr. '232 or De Boton '872. Further, Claims 5 and 6 are dependent on Claim 1 either directly or indirectly. Therefore, Applicant believes that Claims 1 and 2 as amended are neither anticipated by nor obvious from McMorrow, Jr. '232 in view of De Boton '872 and that claims 1 and 2 are patentable. Claims 3, 5 and 6 are dependent on Claim 1 either directly or indirectly, which Applicant believes to be patentable, so dependent Claims 3, 5 and 6 are likewise patentable. Claim 4 is cancelled.

Terminal Disclaimer

Applicant takes note that the previously filed Terminal Disclaimer was accepted.

In view of the above, it is submitted that Claims 1-3, 5 and 6 as amended, are now in condition for allowance. Reconsideration of the rejections to the above claims is

respectfully requested. Accordingly, it is requested that the foregoing amendment be entered and the case sent to issue.

If there are any questions, we urge the Examiner to call us. Please charge any costs in connection with this document to our Deposit Account No. 16-0875.

Respectfully Submitted,
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